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SENATE BILL 5566

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State of Washington

64th Legislature

2015 Regular Session

By Senators Frockt, Hasegawa, Jayapal, Darneille, Keiser, Conway, Cleveland, Kohl-Welles, Nelson, McCoy, Chase, McAuliffe, Fraser, and Billig

1 AN ACT Relating to simplifying and enforcing employee status  
2 under employment laws to ensure fairness to employers and employees  
3 and address the underground economy; amending RCW 39.12.010,  
4 39.12.050, 50.04.100, 50.04.298, 50.12.070, 50.12.072, 50.24.070,  
5 50.04.100, 51.08.070, and 51.08.180; reenacting and amending RCW  
6 49.48.082 and 49.46.010; adding a new section to chapter 39.12 RCW;  
7 adding new sections to chapter 49.52 RCW; adding a new section to  
8 chapter 49.48 RCW; adding a new section to chapter 49.46 RCW; adding  
9 new sections to chapter 50.04 RCW; adding a new section to chapter  
10 51.12 RCW; adding a new chapter to Title 49 RCW; creating new  
11 sections; repealing RCW 39.12.100, 50.04.140, 50.04.145, 51.08.181,  
12 and 51.08.195; and prescribing penalties.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

14 NEW SECTION. **Sec. 1.** The legislature finds that underground  
15 economic activity in this state results in millions of dollars of  
16 lost revenue to the state and is unfair to workers and law-abiding  
17 businesses. Misclassification is workplace fraud. Theft of wages by  
18 employers through misclassification is a significant problem,  
19 particularly in low-wage industries. The legislature intends to  
20 improve compliance with wage-related laws to help address the

1 problems of the underground economy, level the playing field for  
2 honest employers and contractors, and protect workers.

3 NEW SECTION. **Sec. 2.** This chapter may be known and cited as the  
4 employee fair classification act.

5 NEW SECTION. **Sec. 3.** The definitions in this section apply  
6 throughout this chapter unless the context clearly requires  
7 otherwise.

8 (1) "Department" means the department of labor and industries.

9 (2) "Director" means the director of the department of labor and  
10 industries.

11 (3) "Employ" means to suffer or permit to work.

12 (4)(a) "Employee" means a person who performs labor or services  
13 for an employer. A person may be an employee of two or more employers  
14 at the same time.

15 (b) "Employee" does not include a bona fide independent  
16 contractor.

17 (c) "Employee" also does not include:

18 (i) An individual employed in the capacity of an outside  
19 salesperson paid solely by way of commission, as defined and  
20 delimited by rule of the director;

21 (ii) An individual employed on a casual and sporadic basis; or

22 (iii) An individual who performs services for an educational,  
23 charitable, religious, government, or nonprofit organization and who  
24 offers his or her services freely and without pressure or coercion,  
25 direct or implied, and without any contemplation or expectation of  
26 payment. An individual who receives reimbursement for actual expenses  
27 or who receives maintenance, which includes costs for meals and  
28 transient lodging incurred while performing volunteer duties, does  
29 not lose his or her status as a nonemployee.

30 (5)(a) "Employer" means any of the following that employ a  
31 person: (i) An individual; (ii) any form of business entity, or the  
32 receiver, trustee, or successor of a business entity; (iii) an  
33 administrator or executor of an estate; or (iv) the state or any  
34 agency, instrumentality, or political subdivision of the state.  
35 "Employer" includes an individual or entity that acts directly or  
36 indirectly in the interest of an employer in relation to employing a  
37 person. More than one entity may be the "employer," including in  
38 circumstances where one entity controls, is controlled by, or is

1 under common control with another employer, or where one entity  
2 exerts control over the operations of another employer.

3 (b) "Employer" does not include agencies, authorities, or  
4 instrumentalities of the United States, its possessions and  
5 territories, the commonwealth of Puerto Rico, or the District of  
6 Columbia.

7 (6) "Front pay" means the compensation the employee would earn if  
8 reinstated to his or her former position.

9 (7)(a) "Independent contractor" means an individual who performs  
10 labor or services for a party when either:

11 (i)(A) The individual is and will continue to be free from  
12 control or direction over the performance of the labor or services by  
13 the party for whom the labor or services are performed, both under  
14 the contract of labor or service and in fact. Control or direction  
15 includes the right to control or direct as well as general control or  
16 direction over the individual's physical activities;

17 (B) The labor or service is either outside the usual course of  
18 business for which the labor or service is performed, or the labor or  
19 service is performed outside of all the places of business of the  
20 enterprise for which the labor or service is performed; and

21 (C) The individual is customarily engaged in an independently  
22 established trade, occupation, business, or profession of the same  
23 nature as that involved in the contract of labor or service; or

24 (ii)(A) The individual is and will continue to be free from  
25 control or direction over the performance of the labor or services by  
26 the party for whom the labor or services are performed, both under  
27 the contract of labor or service and in fact. Control or direction  
28 includes the right to control or direct as well as general control or  
29 direction over the individual's physical activities;

30 (B) The individual's business is not financially dependent on the  
31 relationship with the party for whom the labor or services are  
32 performed and the business continues after the cancellation or  
33 destruction of the relationship with that party;

34 (C) The individual has a substantial investment of capital in the  
35 individual's business beyond ordinary tools and equipment and a  
36 personal vehicle;

37 (D) The individual gains profits and bears losses from the  
38 business as a result of his or her managerial skills and substantial  
39 investment of capital in the individual's business;

1 (E) The individual makes his or her labor or services available  
2 to the general public or the business community on a continuing  
3 basis;

4 (F) The individual files at the next applicable filing period,  
5 both under the contract of service and in fact, a schedule of  
6 expenses with the internal revenue service for the type of business  
7 the individual is conducting;

8 (G) The party for whom the labor or services are performed does  
9 not represent the individual as an employee of that party to its  
10 customers;

11 (H) The individual has the right, under contract and in fact, to  
12 perform similar labor or services for others on whatever basis and  
13 whenever he or she chooses;

14 (I) The individual has an active and valid certificate of  
15 registration with the department of revenue and an active and valid  
16 account with any other state agencies as required by the particular  
17 case, for the business the individual is conducting for the payment  
18 of all state taxes normally paid by employers and businesses and has  
19 registered for and received a unified business identifier number from  
20 the state of Washington; and

21 (J) The individual is maintaining a separate set of books or  
22 records that reflect all items of income and expenses of the business  
23 that the individual is conducting.

24 (b) In determining whether an individual is an independent  
25 contractor, acts taken by an employer to comply with local, state, or  
26 federal laws or regulations may not be considered as proof of  
27 independent contractor status.

28 (8) "Misclassification" means designating an employee as a  
29 nonemployee of the employer.

30 (9)(a) "Pattern or practice" means that, in addition to the  
31 current violation, within the previous ten years the employer was:

32 (i) Convicted of a criminal violation of a state or local law  
33 concerning nonpayment of wages;

34 (ii) Subject to a court order entering final judgment for a  
35 violation of this chapter or chapter 39.12, 49.46, 49.48, or 49.52  
36 RCW, and the judgment was not satisfied or current within thirty days  
37 of the later of: (A) The expiration of the time for appealing the  
38 order; or (B) if a timely appeal was made, the date of the final  
39 resolution of the appeal; or

1 (iii) Subject to a final and binding citation and notice of  
2 assessment from the department for a violation of this chapter or  
3 chapter 39.12 or 49.48 RCW, and the citation and penalty was not  
4 satisfied or current within thirty days of the date the citation  
5 became final and binding.

6 (b) For purposes of this subsection (9), an employer includes a  
7 successor employer, as defined in RCW 49.48.082.

8 (10) "Person" means a natural person, firm, partnership,  
9 corporation, association, or organization.

10 (11) "Willful" means a knowing and intentional action that is  
11 neither accidental nor the result of a bona fide dispute.

12 NEW SECTION. **Sec. 4.** (1) An employer-employee relationship  
13 exists when an individual performs labor or services for an employer.  
14 The party asserting that an individual is not an employee must  
15 establish by a preponderance of the evidence that the individual is  
16 an independent contractor or is otherwise not an employee under this  
17 chapter.

18 (2) A general contractor is not responsible for violations of a  
19 bona fide independent contractor or subcontractor under this chapter  
20 unless the general contractor exerts substantial control over the  
21 day-to-day work of the independent contractor or subcontractor. For  
22 purposes of this subsection:

23 (a) "General contractor" means the contractor required to be  
24 registered under chapter 18.27 RCW or licensed under chapter 19.28  
25 RCW whose business operations for a project require the use of more  
26 than one building trade or craft upon a single job or project, under  
27 a single building permit, and who has responsibility to superintend  
28 the project as a whole.

29 (b) "Subcontractor" means a contractor who engages in a business  
30 that is required to be registered under chapter 18.27 RCW or licensed  
31 under chapter 19.28 RCW and who is not a general contractor.

32 NEW SECTION. **Sec. 5.** (1) An employer may not willfully  
33 misclassify an employee as an independent contractor.

34 (2) A person may not charge an employee who has been  
35 misclassified as an independent contractor a fee, or make any  
36 deductions from compensation for any purpose, including for goods,  
37 materials, space rental, services, government licenses, repair,  
38 equipment maintenance, or fines arising from the employment where any

1 of the acts would have violated the law if the individual had not  
2 been misclassified.

3 (3) A person may not require or request an employee to enter into  
4 an agreement or sign a document that results in the misclassification  
5 of the employee as an independent contractor or otherwise does not  
6 accurately reflect the employee's relationship with the employer.

7 (4) A person may not perform the following acts for the purpose  
8 of facilitating or evading detection of a violation of this chapter:

9 (a) Form, assist in, or induce the formation of a corporation,  
10 partnership, limited liability company, or other business entity; or

11 (b) Pay or collect a fee for use of a foreign or domestic  
12 corporation, partnership, limited liability company, or other  
13 business entity.

14 (5) A person may not, for remuneration, conspire with, aid and  
15 abet, assist, or advise an employer with the intent of violating this  
16 chapter.

17 NEW SECTION. **Sec. 6.** (1) The department may conduct an  
18 investigation if it obtains information indicating a person may have  
19 violated this chapter, but the department may not investigate a  
20 violation of this chapter that occurred more than three years before  
21 the date of the violation. For the purposes of this section, a  
22 violation occurs from the initial date of misclassification and for  
23 as long as the employee continues to be misclassified. The three-year  
24 period is tolled during any period of time that an employer, any of  
25 its agents, or any person acting on behalf of the employer deters an  
26 individual from filing a complaint under this section.

27 (2) If the department determines that a person violated this  
28 chapter, it may:

29 (a) For a violation of section 8 of this act, order the employer  
30 to pay a civil penalty of not less than one thousand dollars and not  
31 more than ten thousand dollars;

32 (b) For a violation of section 5 of this act, order the person to  
33 pay a civil penalty of: (i) Not less than one thousand dollars and  
34 not more than ten thousand dollars per employee; or (ii) if the  
35 person has engaged in a pattern or practice of violations, not less  
36 than ten thousand dollars and not more than twenty-five thousand  
37 dollars per employee;

38 (c) For a violation of section 5 of this act, order persons,  
39 including employers, to jointly and severally pay the following: (i)

1 Three times the amount of wages, salary, and employment benefits  
2 denied or withheld, except benefits under Title 50 or 51 RCW; and  
3 (ii) reimbursement for taxes and the value of any benefits paid by  
4 the employee;

5 (d) In addition, for a violation of section 5 of this act, order  
6 the employer to pay any taxes owed, reinstate the employee, and  
7 properly classify the employee. The director may award front pay in  
8 lieu of reinstatement;

9 (e) Determine whether to initiate collection procedures pursuant  
10 to RCW 51.16.150 through 51.16.190, and send a copy of its  
11 determination, including any supporting documentation, to the  
12 employment security department; and

13 (f) The department must consider referrals based on a court  
14 finding of a violation of section 5 of this act to determine whether  
15 to initiate collection procedures.

16 (3) An employer may appeal the department's determination  
17 pursuant to RCW 49.48.084.

18 (4) The department must deposit civil penalties collected under  
19 this chapter into the employee fair classification act account  
20 created in section 9 of this act.

21 NEW SECTION. **Sec. 7.** (1) An individual aggrieved by a violation  
22 of section 5 of this act may bring suit on behalf of himself or  
23 herself or on behalf of any other individual who is similarly  
24 situated.

25 (2) If a court determines that a person or persons, including  
26 employers, violated section 5 of this act, it:

27 (a) Shall order persons, including employers, to jointly and  
28 severally pay the greater of:

29 (i) Three times the amount of any wages including overtime,  
30 salary, and employment benefits unlawfully denied or withheld except  
31 benefits under Titles 50 and 51 RCW; or

32 (ii) Statutory damages for each employee aggrieved by the  
33 violation. Statutory damages must not be less than one thousand  
34 dollars and not more than ten thousand dollars per employee, unless  
35 the person engaged in a pattern or practice of violations, in which  
36 case the statutory damages must be not less than ten thousand dollars  
37 and not more than twenty-five thousand dollars per employee;

1 (b) May order persons, including employers, to jointly and  
2 severally pay the employee reimbursement for any taxes and the value  
3 of any benefits paid by the employee; and

4 (c) Shall order persons, including employers, to jointly and  
5 severally pay attorneys' fees and costs.

6 (3) If a court determines that an employer violated section 5 of  
7 this act, it may order the employer to pay any taxes owed and award  
8 injunctive or other equitable relief, including reinstatement and  
9 reclassification of the employee with terms and conditions at least  
10 as favorable as those that applied when the employee was  
11 misclassified, including rate of compensation, value of any benefits,  
12 and hours of work. The court may award front pay in lieu of  
13 reinstatement.

14 (4) A civil action under this section must be brought no later  
15 than three years after the violation occurred. For the purposes of  
16 this section, a violation occurs from the initial date of  
17 misclassification and for as long as the employee continues to be  
18 misclassified. The three-year period is tolled during any period of  
19 time that an employer, any of its agents, or any person acting on  
20 behalf of the employer deters an individual from bringing an action  
21 under this section.

22 NEW SECTION. **Sec. 8.** (1) If an employer engages an individual  
23 to perform labor or services for remuneration and considers the  
24 individual to be an independent contractor, the employer shall post  
25 and keep posted the following notice:

26 "Every worker has the right to be properly classified as an  
27 employee rather than an independent contractor if the  
28 individual does not meet the requirements of an independent  
29 contractor under the law known as the employee fair  
30 classification act.

31 If you believe you or someone else has been improperly  
32 classified as an independent contractor under the employee  
33 fair classification act, you have the right to challenge this  
34 classification by filing a complaint with the department of  
35 labor and industries or by bringing an action in state  
36 court."

37 (2) The notice required by this section must be in English,  
38 Spanish, and any other language or languages primarily spoken by the  
39 majority of the workforce. The notice must be posted in a conspicuous



1 place in each of the employer's offices in the state and at each job  
2 site where a worker classified as an independent contractor performs  
3 labor or services.

4 NEW SECTION. **Sec. 9.** The employee fair classification act  
5 account is created in the state treasury. All receipts from civil  
6 penalties issued under section 6 of this act must be deposited in the  
7 account. Moneys in the account may be spent only after appropriation.  
8 Expenditures from the account may be used only for enforcement of  
9 this chapter.

10 NEW SECTION. **Sec. 10.** The department may adopt rules to  
11 implement this chapter. In addition, the department may develop a  
12 plan for strategic enforcement of this chapter, prioritizing  
13 industries and workplaces with a high concentration of violations.

14 **PREVAILING WAGE**

15 **Sec. 11.** RCW 39.12.010 and 1989 c 12 s 6 are each amended to  
16 read as follows:

17 (1) The "prevailing rate of wage," for the intents and purposes  
18 of this chapter, shall be the rate of hourly wage, usual benefits,  
19 and overtime paid in the locality, as hereinafter defined, to the  
20 majority of workers, laborers, or mechanics, in the same trade or  
21 occupation. In the event that there is not a majority in the same  
22 trade or occupation paid at the same rate, then the average rate of  
23 hourly wage and overtime paid to such laborers, workers, or mechanics  
24 in the same trade or occupation shall be the prevailing rate. If the  
25 wage paid by any contractor or subcontractor to laborers, workers, or  
26 mechanics on any public work is based on some period of time other  
27 than an hour, the hourly wage for the purposes of this chapter shall  
28 be mathematically determined by the number of hours worked in such  
29 period of time.

30 (2) The "locality" for the purposes of this chapter shall be the  
31 largest city in the county wherein the physical work is being  
32 performed.

33 (3) The "usual benefits" for the purposes of this chapter shall  
34 include the amount of:

1 (a) The rate of contribution irrevocably made by a contractor or  
2 subcontractor to a trustee or to a third person pursuant to a fund,  
3 plan, or program; and

4 (b) The rate of costs to the contractor or subcontractor which  
5 may be reasonably anticipated in providing benefits to workers,  
6 laborers, and mechanics pursuant to an enforceable commitment to  
7 carry out a financially responsible plan or program which was  
8 communicated in writing to the workers, laborers, and mechanics  
9 affected, for medical or hospital care, pensions on retirement or  
10 death, compensation for injuries or illness resulting from  
11 occupational activity, or insurance to provide any of the foregoing,  
12 for unemployment benefits, life insurance, disability and sickness  
13 insurance, or accident insurance, for vacation and holiday pay, for  
14 defraying costs of apprenticeship or other similar programs, or for  
15 other bona fide fringe benefits, but only where the contractor or  
16 subcontractor is not required by other federal, state, or local law  
17 to provide any of such benefits.

18 (4) "Employee" has the same meaning as "laborers, workers, and  
19 mechanics."

20 (5) "Employer" and "independent contractor" have the same  
21 meanings as in section 3 of this act.

22 (6)(a) "Pattern or practice" means that, in addition to the  
23 current violation, within the previous ten years the employer was:

24 (i) Convicted of a criminal violation of a state or local law  
25 concerning nonpayment of wages;

26 (ii) Subject to a court order entering final judgment for a  
27 violation of this chapter or chapter 49.46, 49.48, 49.52, or 49.---  
28 RCW (the new chapter created in section 31 of this act), and the  
29 judgment was not satisfied or current within thirty days of the later  
30 of: (i) The expiration of the time for appealing the order; or (ii)  
31 if a timely appeal was made, the date of the final resolution of the  
32 appeal; or

33 (iii) Subject to a final and binding citation and notice of  
34 assessment from the department of labor and industries for a  
35 violation of this chapter or chapter 49.48 RCW, and the citation and  
36 penalty was not satisfied or current within thirty days of the date  
37 the citation became final and binding.

38 (b) For purposes of this subsection (6), an employer includes a  
39 successor employer, as defined in RCW 49.48.082.

1       (7) An "interested party" for the purposes of this chapter shall  
2 include a contractor, subcontractor, an employee of a contractor or  
3 subcontractor, an organization whose members' wages, benefits, and  
4 conditions of employment are affected by this chapter, and the  
5 director of labor and industries or the director's designee.

6       NEW SECTION.   **Sec. 12.** A new section is added to chapter 39.12  
7 RCW to read as follows:

8       An employer-employee relationship exists when a laborer, worker,  
9 or mechanic performs labor for an employer. The party asserting that  
10 an individual is not an employee must establish by a preponderance of  
11 the evidence that the individual is an independent contractor.

12       **Sec. 13.** RCW 39.12.050 and 2009 c 219 s 3 are each amended to  
13 read as follows:

14       (1) Any contractor or subcontractor who files a false statement  
15 or fails to file any statement or record required to be filed under  
16 this chapter and the rules adopted under this chapter, shall, after a  
17 determination to that effect has been issued by the director after  
18 hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum  
19 of five hundred dollars for each false filing or failure to file, and  
20 shall not be permitted to bid, or have a bid considered, on any  
21 public works contract until the penalty has been paid in full to the  
22 director. The civil penalty under this subsection shall not apply to  
23 a violation determined by the director to be an inadvertent filing or  
24 reporting error. Civil penalties shall be deposited in the public  
25 works administration account.

26       To the extent that a contractor or subcontractor has not paid  
27 wages at the rate due pursuant to RCW 39.12.020, and a finding to  
28 that effect has been made as provided by this subsection, such unpaid  
29 wages shall constitute a lien against the bonds and retainage as  
30 provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

31       (2) If a contractor or subcontractor is found to have (~~violated~~  
32 ~~the provisions of subsection (1) of this section for a second time~~  
33 ~~within a five year period~~)) engaged in a pattern or practice of  
34 violations, the contractor or subcontractor shall be subject to the  
35 sanctions prescribed in subsection (1) of this section and shall not  
36 be allowed to bid on any public works contract for one year. The one  
37 year period shall run from the date of notice by the director of the  
38 determination of noncompliance. When an appeal is taken from the

1 director's determination, the one year period shall commence from the  
2 date of the final determination of the appeal.

3 The director shall issue his or her findings that a contractor or  
4 subcontractor has violated the provisions of this subsection after a  
5 hearing held subject to the provisions of chapter 34.05 RCW.

#### 6 **WAGE DEDUCTIONS**

7 NEW SECTION. **Sec. 14.** A new section is added to chapter 49.52  
8 RCW to read as follows:

9 (1) "Employer" and "independent contractor" have the same  
10 meanings as in section 3 of this act.

11 (2) "Employee" has the same meaning as in section 3(4) (a) and  
12 (b) of this act.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 49.52  
14 RCW to read as follows:

15 (1) An employer-employee relationship exists when an individual  
16 performs labor or services for an employer. The party asserting that  
17 an individual is not an employee must establish by a preponderance of  
18 the evidence that the individual is an independent contractor.

19 (2) A general contractor is not responsible for violations of a  
20 bona fide independent contractor or subcontractor under this chapter  
21 unless the general contractor exerts substantial control over the  
22 day-to-day work of the independent contractor or subcontractor. For  
23 purposes of this section, "general contractor" and "subcontractor"  
24 have the same meanings as in section 4(2) (a) and (b) of this act.

#### 25 **WAGE PAYMENT ACT**

26 **Sec. 16.** RCW 49.48.082 and 2010 c 42 s 1 are each reenacted and  
27 amended to read as follows:

28 The definitions in this section apply throughout this section and  
29 RCW 49.48.083 through 49.48.086:

30 (1) "Citation" means a written determination by the department  
31 that a wage payment requirement has been violated.

32 (2) "Department" means the department of labor and industries.

33 (3) "Determination of compliance" means a written determination  
34 by the department that wage payment requirements have not been  
35 violated.

1 (4) "Director" means the director of the department of labor and  
2 industries, or the director's authorized representative.

3 (5) "Employee" has the meaning provided in: (a) RCW 49.46.010 for  
4 purposes of a wage payment requirement set forth in RCW 49.46.020 or  
5 49.46.130; and (b) (~~RCW 49.12.005~~) section 3(4) (a) and (b) of this  
6 act for purposes of a wage payment requirement set forth in RCW  
7 49.48.010, 49.52.050, or 49.52.060.

8 (6) "Employer" (~~(has the meaning provided in RCW 49.46.010 for~~  
9 ~~purposes of a wage payment requirement set forth in RCW 49.46.020,~~  
10 ~~49.46.130, 49.48.010, 49.52.050, or 49.52.060)~~) and "independent  
11 contractor" have the same meanings as in section 3 of this act.

12 (7) "Notice of assessment" means a written notice by the  
13 department that, based on a citation, the employer shall pay the  
14 amounts assessed under RCW 49.48.083.

15 (8) "Repeat willful violator" means any employer that has been  
16 the subject of a final and binding citation and notice of assessment  
17 for a willful violation of a wage payment requirement within three  
18 years of the date of issue of the most recent citation and notice of  
19 assessment for a willful violation of a wage payment requirement.

20 (9) "Successor" means any person to whom an employer quitting,  
21 selling out, exchanging, or disposing of a business sells or  
22 otherwise conveys in bulk and not in the ordinary course of the  
23 employer's business, more than fifty percent of the property, whether  
24 real or personal, tangible or intangible, of the employer's business.

25 (10) "Wage" has the meaning provided in RCW 49.46.010.

26 (11) "Wage complaint" means a complaint from an employee to the  
27 department that asserts that an employer has violated one or more  
28 wage payment requirements and that is reduced to writing.

29 (12) "Wage payment requirement" means a wage payment requirement  
30 set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or  
31 49.52.060, and any related rules adopted by the department.

32 (13) "Willful" means a knowing and intentional action that is  
33 neither accidental nor the result of a bona fide dispute, as  
34 evaluated under the standards applicable to wage payment violations  
35 under RCW 49.52.050(2).

36 NEW SECTION. Sec. 17. A new section is added to chapter 49.48  
37 RCW to read as follows:

38 (1) An employer-employee relationship exists when an individual  
39 performs labor or services for an employer. The party asserting that

1 an individual is not an employee must establish by a preponderance of  
2 the evidence that the individual is an independent contractor or is  
3 otherwise not an employee under this chapter.

4 (2) A general contractor is not responsible for violations of a  
5 bona fide independent contractor or subcontractor under this chapter  
6 unless the general contractor exerts substantial control over the  
7 day-to-day work of the independent contractor or subcontractor. For  
8 purposes of this section, "general contractor" and "subcontractor"  
9 have the same meaning as in section 4(2) (a) and (b) of this act.

#### 10 MINIMUM WAGE ACT

11 **Sec. 18.** RCW 49.46.010 and 2013 c 141 s 1 are each reenacted and  
12 amended to read as follows:

13 As used in this chapter:

14 (1) "Director" means the director of labor and industries;

15 (2) (~~("Employ" includes to permit to work)~~) "Department,"  
16 "employ," and "employer" have the same meanings as in section 3 of  
17 this act;

18 (3) "Employee" (~~(includes any individual employed by an employer~~  
19 ~~but)~~) has the same meaning as in section 3(4) (a) and (b) of this act  
20 and shall not include:

21 (a) Any individual (i) employed as a hand harvest laborer and  
22 paid on a piece rate basis in an operation which has been, and is  
23 generally and customarily recognized as having been, paid on a piece  
24 rate basis in the region of employment; (ii) who commutes daily from  
25 his or her permanent residence to the farm on which he or she is  
26 employed; and (iii) who has been employed in agriculture less than  
27 thirteen weeks during the preceding calendar year;

28 (b) Any individual employed in casual labor in or about a private  
29 home, unless performed in the course of the employer's trade,  
30 business, or profession;

31 (c) Any individual employed in a bona fide executive,  
32 administrative, or professional capacity or in the capacity of  
33 outside salesperson as those terms are defined and delimited by rules  
34 of the director. However, those terms shall be defined and delimited  
35 by the human resources director pursuant to chapter 41.06 RCW for  
36 employees employed under the director of personnel's jurisdiction;

37 (d) Any individual engaged in the activities of an educational,  
38 charitable, religious, state or local governmental body or agency, or

1 nonprofit organization where the employer-employee relationship does  
2 not in fact exist or where the services are rendered to such  
3 organizations gratuitously. If the individual receives reimbursement  
4 in lieu of compensation for normally incurred out-of-pocket expenses  
5 or receives a nominal amount of compensation per unit of voluntary  
6 service rendered, an employer-employee relationship is deemed not to  
7 exist for the purpose of this section or for purposes of membership  
8 or qualification in any state, local government, or publicly  
9 supported retirement system other than that provided under chapter  
10 41.24 RCW;

11 (e) Any individual employed full time by any state or local  
12 governmental body or agency who provides voluntary services but only  
13 with regard to the provision of the voluntary services. The voluntary  
14 services and any compensation therefor shall not affect or add to  
15 qualification, entitlement, or benefit rights under any state, local  
16 government, or publicly supported retirement system other than that  
17 provided under chapter 41.24 RCW;

18 (f) Any newspaper vendor, carrier, or delivery person selling or  
19 distributing newspapers on the street, to offices, to businesses, or  
20 from house to house and any freelance news correspondent or  
21 "stringer" who, using his or her own equipment, chooses to submit  
22 material for publication for free or a fee when such material is  
23 published;

24 (g) Any carrier subject to regulation by Part 1 of the Interstate  
25 Commerce Act;

26 (h) Any individual engaged in forest protection and fire  
27 prevention activities;

28 (i) Any individual employed by any charitable institution charged  
29 with child care responsibilities engaged primarily in the development  
30 of character or citizenship or promoting health or physical fitness  
31 or providing or sponsoring recreational opportunities or facilities  
32 for young people or members of the armed forces of the United States;

33 (j) Any individual whose duties require that he or she reside or  
34 sleep at the place of his or her employment or who otherwise spends a  
35 substantial portion of his or her work time subject to call, and not  
36 engaged in the performance of active duties;

37 (k) Any resident, inmate, or patient of a state, county, or  
38 municipal correctional, detention, treatment or rehabilitative  
39 institution;

1 (1) Any individual who holds a public elective or appointive  
2 office of the state, any county, city, town, municipal corporation or  
3 quasi municipal corporation, political subdivision, or any  
4 instrumentality thereof, or any employee of the state legislature;

5 (m) All vessel operating crews of the Washington state ferries  
6 operated by the department of transportation;

7 (n) Any individual employed as a seaman on a vessel other than an  
8 American vessel;

9 (4) (~~("Employer" includes any individual, partnership,~~  
10 ~~association, corporation, business trust, or any person or group of~~  
11 ~~persons acting directly or indirectly in the interest of an employer~~  
12 ~~in relation to an employee;~~

13 (+5)) "Occupation" means any occupation, service, trade,  
14 business, industry, or branch or group of industries or employment or  
15 class of employment in which employees are gainfully employed;

16 ((+6)) (5) "Retail or service establishment" means an  
17 establishment seventy-five percent of whose annual dollar volume of  
18 sales of goods or services, or both, is not for resale and is  
19 recognized as retail sales or services in the particular industry;

20 ((+7)) (6) "Wage" means compensation due to an employee by  
21 reason of employment, payable in legal tender of the United States or  
22 checks on banks convertible into cash on demand at full face value,  
23 subject to such deductions, charges, or allowances as may be  
24 permitted by rules of the director.

25 NEW SECTION. **Sec. 19.** A new section is added to chapter 49.46  
26 RCW to read as follows:

27 (1) An employer-employee relationship exists when an individual  
28 performs labor or services for an employer. The party asserting that  
29 an individual is not an employee must establish by a preponderance of  
30 the evidence that the individual is an independent contractor or is  
31 otherwise not an employee under this chapter.

32 (2) A general contractor is not responsible for violations of a  
33 bona fide independent contractor or subcontractor under this chapter  
34 unless the general contractor exerts substantial control over the  
35 day-to-day work of the independent contractor or subcontractor. For  
36 purposes of this section, "general contractor" and "subcontractor"  
37 have the same meaning as in section 4(2) (a) and (b) of this act.



1        NEW SECTION.    **Sec. 20.**    A new section is added to chapter 50.04  
2    RCW to read as follows:

3        The services of an independent contractor, as defined in section  
4    3 of this act, are not services in employment under this title.

5        NEW SECTION.    **Sec. 21.**    A new section is added to chapter 50.04  
6    RCW to read as follows:

7        Services performed by an individual for remuneration shall be  
8    deemed to be employment subject to this title. The party asserting  
9    that personal services are not services in employment must establish  
10   by a preponderance of the evidence that the individual is an  
11   independent contractor or that the services are otherwise not in  
12   employment under this title.

13        **Sec. 22.**    RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each  
14    amended to read as follows:

15        "Employment," subject only to the other provisions of this title,  
16    means personal service, of whatever nature, unlimited by the  
17    relationship of master and servant as known to the common law or any  
18    other legal relationship, including service in interstate commerce,  
19    performed for wages or under any contract calling for the performance  
20    of personal services, written or oral, express or implied.

21        (~~Except as provided by RCW 50.04.145,~~) Personal services  
22    performed for an employing unit by one or more contractors or  
23    subcontractors acting individually or as a partnership, which do not  
24    meet the provisions of (~~RCW 50.04.140~~) section 20 of this act,  
25    shall be considered employment of the employing unit: PROVIDED,  
26    HOWEVER, That such contractor or subcontractor shall be an employer  
27    under the provisions of this title in respect to personal services  
28    performed by individuals for such contractor or subcontractor.

29        **Sec. 23.**    RCW 50.04.298 and 2007 c 146 s 8 are each amended to  
30    read as follows:

31        For the purposes of this title:

32        (1) "Professional employer organization" means a person or entity  
33    that enters into an agreement with one or more client employers to  
34    provide professional employer services. "Professional employer  
35    organization" includes entities that use the term "staff leasing  
36    company," "permanent leasing company," "registered staff leasing  
37    company," "employee leasing company," "administrative employer," or

1 any other name, when they provide professional employer services to  
2 client employers. The following are not classified as professional  
3 employer organizations: Independent contractors in (~~RCW 50.04.140~~)  
4 section 20 of this act; temporary staffing services companies and  
5 services referral agencies as defined in RCW 50.04.245; third-party  
6 payers as defined in RCW 50.04.248; or labor organizations.

7 (2) "Client employer" means any employer who enters into a  
8 professional employer agreement with a professional employer  
9 organization.

10 (3) "Coemployer" means either a professional employer  
11 organization or a client employer that has entered into a  
12 professional employer agreement.

13 (4) "Covered employee" means an individual performing services  
14 for a client employer that constitutes employment under this title.

15 (5) "Professional employer services" means services provided by  
16 the professional employer organization to the client employer, which  
17 include, but are not limited to, human resource functions, risk  
18 management, or payroll administration services, in a coemployment  
19 relationship.

20 (6) "Coemployment relationship" means a relationship that is  
21 intended to be ongoing rather than temporary or project-specific,  
22 where the rights, duties, and obligations of an employer in an  
23 employment relationship are allocated between coemployers pursuant to  
24 a professional employer agreement and state law. A coemployment  
25 relationship exists only if a majority of the employees performing  
26 services to a client employer, or to a division or work unit of a  
27 client employer, are covered employees. In determining the allocation  
28 of rights and obligations in a coemployment relationship:

29 (a) The professional employer organization has only those  
30 employer rights and is subject only to those obligations specifically  
31 allocated to it by the professional employer agreement or state law;

32 (b) The client employer has those rights and obligations  
33 allocated to it by the professional employer agreement or state law,  
34 as well as any other right or obligation of an employer that is not  
35 specifically allocated by the professional employer agreement or  
36 state law.

37 (7) "Professional employer agreement" means a written contract  
38 between a client employer and a professional employer organization  
39 that provides for: (a) The coemployment of covered employees; and (b)  
40 the allocation of employer rights and obligations between the client

1 and the professional employer organization with respect to the  
2 covered employees.

3 **Sec. 24.** RCW 50.12.070 and 2013 c 250 s 1 are each amended to  
4 read as follows:

5 (1)(a) Each employing unit shall keep true and accurate work  
6 records, containing such information as the commissioner may  
7 prescribe. Such records shall be open to inspection and be subject to  
8 being copied by the commissioner or his or her authorized  
9 representatives at any reasonable time and as often as may be  
10 necessary. The commissioner may require from any employing unit any  
11 sworn or unsworn reports with respect to persons employed by it,  
12 which he or she deems necessary for the effective administration of  
13 this title.

14 (b) An employer who contracts with another person or entity for  
15 work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve  
16 a record of the unified business identifier account number for and  
17 compensation paid to the person or entity performing the work. In  
18 addition to the penalty in subsection (3) of this section, failure to  
19 obtain or maintain the record is subject to RCW 39.06.010.

20 (2)(a) Each employer shall register with the department and  
21 obtain an employment security account number. Each employer shall  
22 make periodic reports at such intervals as the commissioner may by  
23 regulation prescribe, setting forth the remuneration paid for  
24 employment to workers in its employ, the full names and social  
25 security numbers of all such workers, and the total hours worked by  
26 each worker and such other information as the commissioner may by  
27 regulation prescribe.

28 (b) If the employing unit fails or has failed to report the  
29 number of hours in a reporting period for which a worker worked, such  
30 number will be computed by the commissioner and given the same force  
31 and effect as if it had been reported by the employing unit. In  
32 computing the number of such hours worked, the total wages for the  
33 reporting period, as reported by the employing unit, shall be divided  
34 by the dollar amount of the state's minimum wage in effect for such  
35 reporting period and the quotient, disregarding any remainder, shall  
36 be credited to the worker: PROVIDED, That although the computation so  
37 made will not be subject to appeal by the employing unit, monetary  
38 entitlement may be redetermined upon request if the department is  
39 provided with credible evidence of the actual hours worked. Benefits

1 paid using computed hours are not considered an overpayment and are  
2 not subject to collections when the correction of computed hours  
3 results in an invalid or reduced claim; however:

4 (i) A contribution paying employer who fails to report the number  
5 of hours worked will have its experience rating account charged for  
6 all benefits paid that are based on hours computed under this  
7 subsection; and

8 (ii) An employer who reimburses the trust fund for benefits paid  
9 to workers and fails to report the number of hours worked shall  
10 reimburse the trust fund for all benefits paid that are based on  
11 hours computed under this subsection.

12 (3) Any employer who fails to keep and preserve records required  
13 by this section shall be subject to a penalty determined by the  
14 commissioner but not to exceed two hundred fifty dollars or two  
15 hundred percent of the quarterly tax for each offense, whichever is  
16 greater.

17 (4) Upon referral from the department of labor and industries  
18 pursuant to section 6 of this act, the employment security department  
19 may initiate procedures for improper recordkeeping and the recovery  
20 of contributions, interest, and penalties.

21 **Sec. 25.** RCW 50.12.072 and 2010 c 72 s 2 are each amended to  
22 read as follows:

23 (1) An employer that knowingly fails to register with the  
24 department and obtain an employment security account number, as  
25 required under RCW 50.12.070(2), is subject to a penalty not to  
26 exceed one thousand dollars per quarter or two times the taxes due  
27 per quarter, whichever is greater. This penalty is in addition to all  
28 other penalties and is in addition to higher rates for employers that  
29 do not meet the definition of "qualified employer" under RCW  
30 50.29.010. This penalty does not apply if the employer can prove that  
31 it had good cause to believe that it was not required to register  
32 with the department.

33 (2) Upon referral from the department of labor and industries  
34 pursuant to section 6 of this act, the employment security department  
35 may initiate procedures for improper recordkeeping and the recovery  
36 of contributions, interest, and penalties.

37 **Sec. 26.** RCW 50.24.070 and 2011 c 301 s 18 are each amended to  
38 read as follows:

1       (1) At any time after the commissioner shall find that any  
 2 contributions, interest, or penalties have become delinquent, the  
 3 commissioner may issue an order and notice of assessment specifying  
 4 the amount due, which order and notice of assessment shall be served  
 5 upon the delinquent employer in the manner prescribed for the service  
 6 of a summons in a civil action, or using a method by which the  
 7 mailing can be tracked or the delivery can be confirmed. Failure of  
 8 the employer to receive such notice or order whether served or mailed  
 9 shall not release the employer from any tax, or any interest or  
 10 penalties thereon.

11       (2) The commissioner must consider referrals based on a court  
 12 finding of a violation of section 5 of this act and may pursue a  
 13 claim for contributions.

14       **Sec. 27.** RCW 50.04.100 and 1982 1st ex.s. c 18 s 14 are each  
 15 amended to read as follows:

16       "Employment," subject only to the other provisions of this title,  
 17 means personal service, of whatever nature, unlimited by the  
 18 relationship of master and servant as known to the common law or any  
 19 other legal relationship, including service in interstate commerce,  
 20 performed for wages or under any contract calling for the performance  
 21 of personal services, written or oral, express or implied.

22       (~~Except as provided by RCW 50.04.145,~~) Personal services  
 23 performed for an employing unit by one or more contractors or  
 24 subcontractors acting individually or as a partnership, which do not  
 25 meet the provisions of (~~RCW 50.04.140~~) section 20 of this act,  
 26 shall be considered employment of the employing unit: PROVIDED,  
 27 HOWEVER, That such contractor or subcontractor shall be an employer  
 28 under the provisions of this title in respect to personal services  
 29 performed by individuals for such contractor or subcontractor.

30   **INDUSTRIAL INSURANCE**

31       **Sec. 28.** RCW 51.08.070 and 2008 c 102 s 2 are each amended to  
 32 read as follows:

33       "Employer" means any person, body of persons, corporate or  
 34 otherwise, and the legal representatives of a deceased employer, all  
 35 while engaged in this state in any work covered by the provisions of  
 36 this title, by way of trade or business, or who contracts with one or  
 37 more workers, the essence of which is the personal labor of such

1 worker or workers. Or as an exception to the definition of employer,  
2 persons or entities are not employers when they contract or agree to  
3 remunerate the services performed by an (~~individual who meets the~~  
4 ~~tests set forth in subsections (1) through (6) of RCW 51.08.195 or~~  
5 ~~the separate tests set forth in RCW 51.08.181 for work performed that~~  
6 ~~requires registration under chapter 18.27 RCW or licensing under~~  
7 ~~chapter 19.28 RCW~~) independent contractor as defined in section 3 of  
8 this act.

9 **Sec. 29.** RCW 51.08.180 and 2008 c 102 s 3 are each amended to  
10 read as follows:

11 "Worker" means every person in this state who is engaged in the  
12 employment of an employer under this title, whether by way of manual  
13 labor or otherwise in the course of his or her employment; also every  
14 person in this state who is engaged in the employment of or who is  
15 working under an independent contract, the essence of which is his or  
16 her personal labor for an employer under this title, whether by way  
17 of manual labor or otherwise, in the course of his or her employment,  
18 or as an exception to the definition of worker, a person is not a  
19 worker if he or she (~~meets the tests set forth in subsections (1)~~  
20 ~~through (6) of RCW 51.08.195 or the separate tests set forth in RCW~~  
21 ~~51.08.181 for work performed that requires registration under chapter~~  
22 ~~18.27 RCW or licensing under chapter 19.28 RCW~~) is an independent  
23 contractor as defined in section 3 of this act: PROVIDED, That a  
24 person is not a worker for the purpose of this title, with respect to  
25 his or her activities attendant to operating a truck which he or she  
26 owns, and which is leased to a common or contract carrier.

27 NEW SECTION. **Sec. 30.** A new section is added to chapter 51.12  
28 RCW to read as follows:

29 An employer-employee relationship exists when an individual  
30 performs labor or services for an employer. The party asserting that  
31 an individual is not an employee must establish by a preponderance of  
32 the evidence that the individual is an independent contractor.

33 NEW SECTION. **Sec. 31.** Sections 2 through 10 of this act  
34 constitute a new chapter in Title 49 RCW.

35 NEW SECTION. **Sec. 32.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 33.** If any part of this act is found to be in  
4 conflict with federal requirements that are a prescribed condition to  
5 the allocation of federal funds to the state or the eligibility of  
6 employers in this state for federal unemployment tax credits, the  
7 conflicting part of this act is inoperative solely to the extent of  
8 the conflict, and the finding or determination does not affect the  
9 operation of the remainder of this act. Rules adopted under this act  
10 must meet federal requirements that are a necessary condition to the  
11 receipt of federal funds by the state or the granting of federal  
12 unemployment tax credits to employers in this state.

13 NEW SECTION. **Sec. 34.** The following acts or parts of acts are  
14 each repealed:

15 (1) RCW 39.12.100 (Independent contractors—Criteria) and 2009 c  
16 63 s 1;

17 (2) RCW 50.04.140 (Employment—Exception tests) and 1991 c 246 s 6  
18 & 1945 c 35 s 15;

19 (3) RCW 50.04.145 (Employment—Exclusions) and 2008 c 102 s 1,  
20 1983 1st ex.s. c 23 s 25, & 1982 1st ex.s. c 18 s 13;

21 (4) RCW 51.08.181 ("Worker"—Registered contractor and electrician  
22 exclusions) and 2008 c 102 s 5; and

23 (5) RCW 51.08.195 ("Employer" and "worker"—Additional exception)  
24 and 2008 c 102 s 4 & 1991 c 246 s 1.

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